No. 96-1750

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

CAROLEE A. MEDICO,

Petitioner,

vs.

CHARLES P. MEDICO, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS THOMAS A. MAKOWSKI, ESQ., SANDOR YELEN, ESQ., SUZAN LATONA, EUGENE DUFFY AND THE HONORABLE ROBERT E. COLVILLE

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner's claims were properly dismissed with prejudice where Petitioner initially filed a Complaint, then filed an amended complaint, and was instructed on how to file a motion seeking leave to file a second amended complaint but failed to do so before the district court dismissed the action, particularly where such amendment would be futile?

2. Whether court-appointed masters in Petitioner's divorce and support proceedings in state court and a special prosecutor appointed to review Petitioner's allegations of wrongdoing are entitled to the protection of absolute immunity from Petitioner's claims?

3. Whether Petitioner's allegations of civil rights violations due to animus against her individually and/or against the spouses of prominent men in Luzerne County, Pennsylvania failed to state a claim upon which relief may be granted?

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Other Authority Cited:

6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 2d* § 1489 (1990) 7

I

STATUTES INVOLVED

In addition to Federal Rules of Civil Procedure 15(a), 59(e) and 60, the following statutes are involved in this case:

> **§ 1983 Civil Action For Deprivation Of Rights.** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

> **(3) Depriving Persons Of Rights Or Privileges.** If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all

> persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

STATEMENT OF THE CASE

A. Procedural Background

On May 26, 1995, Petitioner Carolee A. Medico ("Petitioner") filed her original complaint against six (6) defendants. Thereafter, on September 5, 1995, Petitioner filed an amended complaint against eighteen (18) persons, including Respondents Thomas A. Makowski, Esq., Sandor Yelen, Esq.,

Suzan Latona, Eugene Duffy, the Prothonotary of Luzerne County, Pennsylvania, and the Honorable Robert E. Colville, the District Attorney of Allegheny County, Pennsylvania. All Respondents filed motions to dismiss Petitioner's amended complaint. Petitioner indicated that she was considering filing a second amended complaint and, as Petitioner concedes, during a November 29, 1995 case management conference, the district court instructed Petitioner on the appropriate procedure for filing a motion for leave to amend her amended complaint. *See* Petitioner's Brief at pp. 5, 8.

More than two (2) months after the November 29, 1995 conference, by Order and Opinion dated February 1, 1996, the district court (Rambo, C.J.) granted the motions to dismiss and ordered that the action be dismissed with prejudice. Petitioners' Appendix 3a-19a. By Order and Opinion dated April 10, 1996, the district court denied Petitioner's motion for reconsideration. *Id.* at 20a-21a. Thereafter, Petitioner filed an appeal to the United States Court of Appeals for the Third Circuit and, on February 6, 1997, a judgment order affirming the district court was entered by the Third Circuit. *Id.* at 1a-2a.

B. Factual Background

Petitioner averred in her amended complaint that Respondents Thomas Makowski, Esq. and Sandor Yelen, Esq., duly appointed masters in her divorce and support proceedings, had allegedly engaged in wrongful conduct in their capacities as court-appointed masters in 1983. *See* Amended Complaint ¶¶ 6, 37, 43, 58(3), 58(9). Petitioner further averred that Respondent Suzan Latona had improperly performed services as a court reporter in Petitioner's divorce proceedings in 1983. *See* Amended Complaint ¶¶ 7, 38, 58(4). In addition, Petitioner alleged that Respondent Eugene Duffy, in his capacity as the Prothonotary of Luzerne County, had wrongfully failed to accept

certain papers of Petitioner for filing in her divorce and support proceedings. *See* Amended Complaint ¶ 58(12). Finally, Petitioner objected to Respondent District Attorney Colville's decision, made in his capacity as a specially appointed prosecutor, not to initiate criminal proceedings against certain persons who had allegedly engaged in criminal misconduct against Petitioner. *See* Amended Complaint ¶¶ 5, 58(13).

Petitioner alleged that the eighteen (18) defendants named in her amended complaint had violated her substantive due process rights under 42 U.S.C. § 1983 and conspired to deprive her of her constitutional rights in violation of 42 U.S.C. § 1985. The instant Respondents filed motions to dismiss Petitioner's amended complaint, asserting, *inter alia*, that Petitioner's claims were barred by the doctrine of absolute immunity, that Petitioner failed to state a claim upon which relief could be granted under 42 U.S.C. § 1985, that Petitioner's claims were barred by the applicable statute of limitations, and that the district court should abstain from hearing this matter.

The district court granted all Respondents' Motions to Dismiss, ruling, *inter alia*, that Petitioner failed to state a claim upon which relief could be granted under 42 U.S.C. § 1983, Petitioner's claims against certain Respondents were barred because Respondents were immune from suit, and that Petitioner had not alleged class-based animus so as to state a claim under 42 U.S.C. § 1985. As noted, the Third Circuit Court of Appeals affirmed the district court by a judgment order dated February 6, 1997.

SUMMARY OF ARGUMENT

Petitioner concedes that the Honorable Sylvia H. Rambo, Chief Judge of the United States District Court for the Middle District of Pennsylvania, explained to Petitioner the procedure which she was expected to follow to seek leave of court to further

amend her pleadings. *See* Petitioner's Brief at p. 8. Despite knowledge of the proper procedure and knowledge of the underlying facts and circumstances surrounding her alleged claims, Petitioner failed to seek leave of court during the more than two (2) month period prior to the district court's February 1, 1996 ruling. Because Petitioner failed to seek leave of court to amend her amended complaint prior to its dismissal with prejudice, Petitioner was required to comply with the requirements of Rule 59(e) and/or Rule 60 of the Federal Rules of Civil Procedure to obtain relief.

Petitioner seeks to hold certain public officials and lay persons who were involved in her divorce and support proceedings financially responsible for alleged violations of her civil rights pursuant to 42 U.S.C. § 1983 and § 1985. Petitioner did not, however, seek injunctive relief against Respondents Thomas A. Makowski, Esq., Sandor Yelen, Esq., Suzan Latona, Eugene Duffy, or the Honorable Robert E. Colville. Therefore, the district court properly dismissed Petitioner's amended complaint against them with prejudice, finding that court-appointed masters such as Respondents Makowski and Yelen were entitled to absolute immunity as was District Attorney Colville who, as a specially appointed prosecutor, declined to bring criminal charges based upon Petitioner's claims.

In addition, the district court properly found that Petitioner failed to plead any facts to support her contention that she was the victim of invidious class-based discrimination where Petitioner's allegations demonstrated that, at most, she is a member of a class of women with powerful male spouses who sued for divorce in Luzerne County, Pennsylvania. *See* Petitioner's Appendix 14a. This "class" of persons has never been recognized as the subject of invidious class-based discrimination, therefore, the district court properly rejected Petitioner's claims.

In light of the foregoing, this Court must reject Petitioner's petition for a writ of certiorari. The decisions of the courts below were in accordance with applicable law and Petitioner raises no question of law that justifies the granting of her Petition.

REASONS FOR DENYING THE WRIT

I.

PETITIONER'S POST-JUDGMENT REQUEST SEEKING LEAVE TO FILE ANOTHER AMENDED COMPLAINT WAS PROPERLY REJECTED.

The district court entered an Order on November 29, 1995 which required Petitioner to file an appropriate motion seeking leave to file another amended complaint, if she chose to do so. *See* Petitioner's Brief at pp. 5, 8. Despite that Order, Petitioner did not seek leave to file another amended complaint until *after* the district court issued its February 1, 1996 Opinion and Order dismissing Petitioner's amended complaint, however, Petitioner failed to include a proposed amendment. Moreover, Petitioner did not seek to vacate or set aside the judgment pursuant to Rule 59(a) or Rule 60 of the Federal Rules of Civil Procedure before seeking leave to amend her pleadings. A leading commentator has explained:

> once a judgment is entered the filing of an amendment cannot be allowed until the judgment is set aside or vacated under Rule 59 or Rule 60. The party may move to alter or amend the judgment within ten days after its entry under Rule 59(e) or, if the motion is made after that ten day period has expired, it must be made under the provisions of Rule 60(b) for relief from a judgment or order. This approach appears sound. To hold

> otherwise would enable the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the philosophy favoring finality of judgments and the expeditious termination of litigation. Furthermore, the draftsmen of the rules included Rules 59(e) and 60(b) specifically to provide a mechanism for those situations in which relief must be obtained after judgment and the broad amendment policy of Rule 15(a) should not be construed in a manner that would render those provisions meaningless.

6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 2d* § 1489 at pp. 692-694 (1990) (citations omitted). *See Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 389 (1st Cir.), *cert. denied*, 513 U.S. 1015, 115 S. Ct. 574, 130 L. Ed. 2d 490 (1994) (after a complaint is dismissed, "[u]nless post-judgment relief is granted, the district court lacks power to grant a motion to amend the complaint under Rule 15(a)"). *See also First Nat'l Bank v. Continental Illinois Nat'l Bank & Trust Co.*, 933 F.2d 466, 468 (7th Cir. 1991) ("the presumption in favor of liberality in granting motions to amend, Fed. R. Civ. P. 15(a), is reversed after judgment has been entered").

Petitioner possesses no legally cognizable grounds under Rule 59(e) or Rule 60 to obtain relief from the judgment entered against her. Petitioner concedes that she does not intend to introduce any new legal theory to support her claims yet fails to attempt to articulate how she can overcome the legal deficiencies of her action. *See* Petitioner's Brief at p. 7. Petitioner further concedes that no discovery occurred in this action, thus Petitioner has been in possession of all facts supporting her allegations of misconduct by Respondents yet she neglected to include them in her complaint and in her amended complaint. A

motion for leave to amend a complaint is properly denied where a plaintiff has knowledge of the underlying issues yet failed to assert them. *Sandcrest Outpatient Servs., P.A. v. Cumberland County Hosp. Sys., Inc.*, 853 F.2d 1139, 1148-49 (4th Cir. 1988); *National Distillers & Chem. Corp. v. Brad's Mach. Prods., Inc.*, 666 F.2d 492, 495 (11th Cir. 1982). Moreover, where a party is in possession of the underlying facts and legal theories but chooses not to assert them until after judgment is entered, Rule 15(a) should not be used to afford the party an avenue to escape the consequences of its earlier litigation decisions. *Omni Outdoor Advertising v. Columbia Outdoor Advertising*, 974 F.2d 502, 506 (4th Cir. 1992). In the present case, Petitioner had ample opportunity to seek permission from the district court to amend her amended complaint but failed to do so until after judgment had been entered. In such circumstances, the district court properly denied Petitioner's post-judgment request. *See Jeffries v. Deloitte Touche Tohmatsu Int'l*, 164 F.R.D. 34, 36 (E.D. Pa. 1995). Petitioner has failed to aver any proper grounds under Rule 59 or Rule 60 to alter or amend the judgment or to otherwise obtain relief from the judgment.[1]

II.

THE DISTRICT COURT CORRECTLY DISMISSED PETITIONER'S AMENDED COMPLAINT AGAINST RESPONDENTS MAKOWSKI, YELEN AND COLVILLE DUE TO THE DOCTRINE OF ABSOLUTE IMMUNITY.

Respondents Thomas A. Makowski, Esq. and Sandor Yelen, Esq., who served as court-appointed masters, were entitled to

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1. Moreover, as discussed more fully below, due to the absolute immunity of some Respondents, the lack of any legally sufficient averments of discriminatory conduct, and the application of the statute of limitations, any amendment as to the instant Respondents would be futile and would properly be rejected by the district court. *See Gasoline Sales v. Aero Oil Co.*, 39 F.3d 70, 74 (3d Cir. 1994); *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993).

absolute quasi-judicial immunity. In addition, the Honorable Robert E. Colville, the District Attorney of Allegheny County who had been appointed as a special prosecutor in connection with Petitioner's claims, was entitled to absolute immunity for his decision not to pursue Petitioner's allegations.

A. As Court-Appointed Masters In Petitioner's Divorce Proceedings, Respondents Makowski And Yelen Are Entitled To Absolute Immunity.

The district court properly dismissed Petitioner's claims against Respondents Makowski and Yelen because Petitioner averred that Respondents "Makowski and Yelen are attorneys, and at all times pertinent hereto were officers of the Court of Common Pleas of Luzerne County." Amended complaint at ¶ 6. More specifically, Petitioner averred that "[a]t all times pertinent hereto Defendant Makowski acted as official court master of Common Pleas Luzerne. [sic]". Amended Complaint at ¶ 37. Similarly, Petitioner averred that "[a]t all times pertinent hereto Defendant Yelen acted as official court master". Amended Complaint at ¶ 43. Petitioner did not seek injunctive or declaratory relief against any of the Respondents herein.

As this Court has held:

> The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that it was a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions without apprehension of personal consequences to himself. For that reason the

> Court held that judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. Later we held that this doctrine of judicial immunity was applicable in suits under § 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, for the legislative record gave no indication that Congress intended to abolish this long-established principle.

Stump v. Sparkman, 435 U.S. 349, 355-56, 98 S. Ct. 1099, 55 L. Ed. 2d 331, 338-39 (1978). This Court indicated "that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Stump*, 435 U.S. at 362. More recently, this Court held that "our cases make clear that the [absolute judicial] immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for non-judicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12, 112 S. Ct. 286, 116 L. Ed. 2d 9, 14 (1991) (citations omitted). The relevant inquiry is the nature and function of the act, not the act itself; therefore, this Court must look to the particular act's relation to a general function normally performed by a judge. *See Mireles*, 502 U.S. at 13.

As court-appointed judicial officers, Respondents Makowski and Yelen are entitled to absolute immunity from the claims set forth in Petitioner's amended complaint because judges and those acting in judicial capacities are absolutely free

from liability for damages for acts performed in their official capacities, whether under § 1983 or § 1985. *See Buchanan v. Buchanan*, No. 93-36051, 1994 U.S. App. LEXIS 34447, at *5 (9th Cir. Dec. 6, 1994); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). The doctrine of absolute judicial immunity extends to "masters" and other judicial officers in divorce or custody matters because their actions are taken in a judicial capacity, therefore, claims under §§ 1983, 1985, 1986 and 1988 are barred. *Humphrey v. Court of Common Pleas*, 640 F. Supp. 1239, 1242 n.2 (M.D. Pa. 1986); *Raitport v. Provident Nat'l Bank*, 451 F. Supp. 522, 527 (E.D. Pa. 1978); *Schapiro v. Montgomery County Court*, No. 95-0986, 1995 U.S. Dist. LEXIS 7910, at **7-8, (E.D. Pa. June 8, 1995), *aff'd*, 74 F.3d 1227 (3d Cir. 1995). *See also Gardner v. Parson*, 874 F.2d 131, 146 (3d Cir. 1989) (a guardian *ad litem* is absolutely immune when acting as an integral part of the judicial process including, *inter alia*, "making reports or recommendations to the court in which the guardian acts as an actual functionary or arm of the court, not only in status but in reality"). Under Pennsylvania law, masters in divorce occupy quasi-judicial positions and have the status of judicial officers because masters derive their power from the court that appointed them. *Commonwealth v. Beddick*, 180 Pa. Super. 221, 119 A.2d 590, 592 (1956). *See* Pa. R. Civ. P. 1920.51.

"A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Stump*, 435 U.S. at 356-57. *See Pierson v. Ray*, 386 U.S. 547, 554-55, 87 S. Ct. 1213, 1217-18, 18 L. Ed. 2d 288 (1967) (absolute immunity doctrine is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences). Significantly, the doctrine of judicial immunity

extends to immunity from suit, not just from the ultimate assessment of damages. *Mireles*, 502 U.S. at 11.

Petitioner's claims against Respondents Makowski and Yelen are for money damages and Petitioner admittedly does not seek injunctive relief against these two Respondents whose challenged conduct occurred in approximately 1983.[2] In addition, Petitioner's amended complaint reveals that Respondents Makowski and Yelen had jurisdiction over her divorce and support proceedings. Petitioner concedes that she appeared before Respondents Makowski and Yelen in their capacities as court-appointed masters in her divorce and support proceedings. Petitioner does not and cannot claim that Respondents Makowski and/or Yelen lacked jurisdiction to proceed as court-appointed masters in her divorce and support proceedings.

Assuming the truth of Petitioner's allegations, which the district court properly did in ruling upon the motions to dismiss, Petitioner's claims against these Respondents may be summarized as follows: (1) Respondents Makowski and/or Yelen, along with Respondents Latona and Williams, improperly altered, amended or destroyed various court transcripts from Petitioner's divorce proceeding; and (2) Respondents Makowski and/or Yelen delayed ruling upon various issues in Petitioner's divorce and support proceedings. The certification of transcripts and the use of transcripts in judicial proceedings are normal functions of a judge and/or court-appointed masters in divorce and support proceedings in Pennsylvania. *See, e.g.*, 23 Pa. C.S.

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2. Petitioner's discussion of *Pulliam v. Allen*, 466 U.S. 522 (1984) is inapplicable to Respondents herein because Petitioner never asserted claims for injunctive relief against them. Moreover, Petitioner's reliance upon *Monroe v. Pape*, 365 U.S. 167 (1961) fails to acknowledge that it was substantially overruled by *Monell v. Department of Social Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

§ 3321 (regarding hearings by court-appointed masters in divorce proceedings); Pa. R. Civ. P. 1920.51(a)(1); Pa. R. Civ. P. 1920.53(a)(1), (b), (c). Allegations that a judicial officer caused transcripts to be altered must be dismissed due to absolute judicial immunity because such conduct constitutes "judicial acts". *See Eades v. Sterlinske*, 810 F.2d 723, 725-26 (7th Cir.), *cert. denied*, 484 U.S. 847, 108 S. Ct. 143, 98 L. Ed. 2d 99 (1987); *Green v. Maraio*, 722 F.2d 1013, 1018 (2d Cir. 1983). Because the nature and function of the alleged acts of Respondents Makowski and Yelen are of a general function normally performed by a judge or court-appointed master, Petitioner's claims were properly dismissed with prejudice. *See Mireles*, 502 U.S. at 12; *Forrester v. White*, 484 U.S. 219, 227, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988) (a judicial act does not become less judicial by virtue of an allegation of malice or corruption of motive). In light of these claims, Respondents Makowski and Yelen are entitled to absolute quasi-judicial immunity because their alleged conduct admittedly occurred when they had jurisdiction over Petitioner's divorce-related proceedings. Therefore, the district court properly dismissed Petitioner's amended complaint.

Petitioner's claims that Respondents Makowski and/or Yelen violated her civil rights due to their alleged delay in rendering a decision in her divorce and/or support proceedings must also be rejected:

> Deciding when to issue a decision is part and parcel in a judge's docket management function over which he has broad and virtually unfettered discretion. A judge may weigh a multitude of factors in deciding when to decide a case. The relative importance of the case among other pending cases, the prospects that another court will soon issue an important legal precedent, the difficulty

> of making a decision in the case, and the size and complexity of the case are only a few of the factors he must weigh. Moreover, the timing of the decision is normally, if not always, a judicial decision. . . . For these reasons we think that deciding when to decide a case, no less than deciding the case itself, is a judicial act for which a judge is absolutely immune. We therefore hold that [a judge's] delay in deciding the case, albeit inordinate, is cloaked with absolute judicial immunity.

Lowe v. Letsinger, 772 F.2d 308, 312 (7th Cir. 1985) (citations omitted).[3]

There are no claims against Respondents Makowski or Yelen which derive from allegations other than those based on alleged acts in their capacities as judicial officers. Moreover, Petitioner's amended complaint demonstrates that the Court of Common Pleas of Luzerne County, Pennsylvania and its duly-appointed masters properly had jurisdiction over Petitioner's divorce and support proceedings. Therefore, as a matter of law, Petitioner's amended complaint is barred by the doctrine of absolute immunity and her claims against Respondents Makowski and Yelen were properly dismissed with prejudice.

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3. Petitioner, who was represented by counsel at all times relevant to the divorce dispute, must concede the availability of appellate rights and remedies in divorce and support proceedings in Pennsylvania. Petitioner's apparent failure to properly and timely pursue her appellate rights cannot be used to justify abrogating well-settled legal principles regarding the absolute immunity of judges, court masters, prosecutors, and other public officials.

B. District Attorney Colville's Decision Not To Prosecute Certain Alleged Claims Is Entitled To Absolute Prosecutorial Immunity.

Petitioner's amended complaint demonstrates that Petitioner improperly seeks to impose civil liability against District Attorney Colville, who was appointed as a special prosecutor to investigate Petitioner's claims, for deciding not to institute criminal proceedings based on Petitioner's allegations of court corruption in Luzerne County and for failing or refusing to investigate and proceed against Respondents Charles P. Medico and Lawrence D. MacDonald, and their alleged agents and co-conspirators. *See* Amended Complaint ¶¶ 5, 58(13). Petitioner seeks to strip District Attorney Colville of his absolute immunity merely because he failed to prosecute Petitioner's fanciful allegations of wrongdoing.

In light of Petitioner's allegations, this Court must engage in a functional analysis of each alleged activity of which Petitioner complains. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 125 L. Ed. 2d 209, 223 (1993); *Burns v. Reed*, 500 U.S. 478, 486, 111 S. Ct. 1934, 114 L. Ed. 2d 547 (1991); *Imbler v. Pachtman*, 424 U.S. 409, 430, 96 S. Ct. 984, 47 L. Ed. 2d 128, 143 (1976); *Giuffre v. Bissell*, 31 F.3d 1241, 1251 (3d Cir. 1994). "[T]he relevant inquiry is the nature and function of the act, not the act itself." *Kulwicki v. Dawson*, 969 F.2d 1454, 1464 (3d Cir. 1992) (*citing Mireles*, 502 U.S. 9). As the *Kulwicki* court held:

> Prosecutors are subject to varying levels of official immunity. Absolute immunity attaches to all actions performed in a "quasi-judicial" role. *Imbler v. Pachtman*, 424 U.S. 409, 430, 96 S. Ct. 984, 994-95, 47 L.Ed.2d 128 (1976). This includes activity taken while

> in court, such as the presentation of evidence or legal arguments, as well as selected out-of-court behavior "intimately associated with the judicial phases" of litigation.

Kulwicki, 969 F.2d at 1463.

"The decision to initiate a prosecution is at the core of a prosecutor's judicial role." *Imbler*, 424 U.S. at 430-31, 96 S. Ct. at 994-96. *See Rose v. Bartle*, 871 F.2d 331, 343 (3d Cir. 1989); *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1268 (8th Cir.), *cert. denied*, __ U.S. __, 117 S. Ct. 179, 136 L. Ed. 2d 119 (1996). A prosecutor is absolutely immune when making this decision, even where he acts without a good faith belief that any wrongdoing has occurred. *See Kulwicki*, 969 F.2d at 1463-64; *Rose*, 871 F.2d at 347 n.12; *Joseph v. Patterson*, 795 F.2d 549, 557 (6th Cir. 1986), *cert. denied*, 481 U.S. 1023, 107 S. Ct. 1910, 95 L. Ed. 2d 516 (1987). *See Buckley*, 509 U.S. at 273 ("acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. Those acts must include the professional evaluation of the evidence assembled . . ."). Similarly, prosecutorial immunity extends to a prosecutor's decision *not* to initiate a civil or criminal complaint. *See Newcomb v. Ingle*, 944 F.2d 1534, 1536 (10th Cir. 1991), *cert. denied*, 502 U.S. 1044, 112 S. Ct. 903, 116 L. Ed. 2d 804 (1992); *Fields v. Soloff*, 920 F.2d 1114, 1119 (2d Cir. 1990); *Meade v. Grubbs*, 841 F.2d 1512, 1532 (10th Cir. 1988); *Dohaish v. Tooley*, 670 F.2d 934, 938 (10th Cir.), *cert. denied*, 459 U.S. 826, 103 S. Ct. 60, 74 L. Ed. 2d 63 (1982); *Doyle v. Oklahoma Bar Ass'n*, 787 F. Supp. 189, 192 (W.D. Okla. 1992), *aff'd*, 998 F.2d 1559 (10th Cir. 1993). District Attorney Colville's decision not to initiate a prosecution in light of Petitioner's claims clearly constitutes an activity intimately associated with the judicial

phase of the criminal process, therefore absolute prosecutorial immunity protects that decision from scrutiny by a disgruntled, chronic litigant. *See Imbler*, 424 U.S. at 430; *Schrob v. Catterson*, 948 F.2d 1402, 1408 (3d Cir. 1991). As this Court has instructed:

> A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust in the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages.

Imbler, 424 U.S. at 424-25.

Petitioner proffers no set of facts under which the doctrine of absolute prosecutorial immunity can be abrogated or found inapplicable. Indeed, Petitioner clearly and unequivocally seeks to hold District Attorney Colville financially responsible for his decision not to prosecute alleged wrongdoers who, in Petitioner's mind, caused harm to Petitioner. Clearly, allowing a litigant to sue a prosecutor for failing to initiate a prosecution would unfairly inhibit the discretion that should be afforded to prosecutors as they weigh the available evidence to determine if an action should be initiated. Public confidence would be eroded because prosecutors might be inclined to approve the prosecution of ill-founded claims because they fear reprisals from disgruntled complainants. For the foregoing reasons, the doctrine of absolute immunity must be invoked to bar claims such as those asserted by Petitioner in this matter.

III.

THE DISTRICT COURT PROPERLY FOUND THAT PETITIONER'S AMENDED COMPLAINT FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The district court properly made its initial inquiry as to whether Petitioner had sufficiently alleged a violation of a constitutional right. *See Pro v. Donatucci*, 81 F.3d 1283, 1287 (3d Cir. 1996); *In re City of Philadelphia Litig.*, 49 F.3d 945, 961 (3d Cir. 1995). The district court correctly found that "Plaintiff has not alleged that she has been *deprived* of any protected right. A mortgage foreclosure action is pending in state court. Thus, at present, Plaintiff is merely threatened with the possible deprivation of marital property. Moreover, through the pending state court actions, Plaintiff's procedural due process rights are being protected." *See* Petitioner's Appendix at 12a (emphasis in original). This Court has analyzed claims asserting conspiracy in violation of § 1985(3) and has stated as follows:

> Our precedents establish that in order to prove a private conspiracy in violation of the first clause of § 1985(3), a plaintiff must show, *inter alia*, (1) that some racial, *or perhaps otherwise class-based, invidiously discriminatory animus* lay behind the conspirators' action, and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment.

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 122 L. Ed. 2d 34, 45 (1993) (citations and footnotes omitted; emphasis added). In its recent pronouncement in *Bray*, this Court noted as follows:

> We have not yet had occasion to resolve the "perhaps"; only in *Griffin* [v. Brackenridge, 403 U.S. 88 (1971)] itself have we addressed and upheld a claim under § 1985(3), and that case involved race discrimination . . . Whatever may be the precise meaning of a "class" for purposes of *Griffin*'s speculative extension of § 1985(3) beyond race, the term unquestionably connotes something more than a group of individuals who share a desire to engage in conduct that the § 1985(3) defendant disfavors. Otherwise, innumerable tort plaintiffs would be able to assert causes of action under § 1985(3) by simply defining the aggrieved class as those seeking to engage in the activity the defendant has interfered with. This definitional ploy would convert the statute into the 'general federal tort law' it was the very purpose of the animus requirement to avoid. As Justice Blackmun has cogently put it, the class "cannot be defined simply as the group of victims of the tortious action."

Bray, 506 U.S. at 269 (citations omitted).

This Court has twice declined to decide whether gender constitutes a class for purposes of claims under § 1985(3). *See Bray*, 506 U.S. at 270-71; *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 835-37, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983). In *Bray*, however, this Court emphasized that the animus requirement demands at least a purpose that focuses upon women *by reason of their sex*. *Bray*, 506 U.S. at 269-70. In the present case, Petitioner has failed to allege that any of the Respondents were motivated by gender-based animus.

Rather, Petitioner has alleged that Respondents were motivated by hostility against her individually or, alternatively, against women seeking divorces from wealthy and prominent men in Luzerne County. Despite Petitioner's protestations, economically disadvantaged women do not constitute a protected class for the purpose of a § 1985 claim. *See United Bhd. of Carpenters*, 463 U.S. at 837. ("we find no convincing support in the legislative history for the proposition that [§ 1985(3)] was intended to reach conspiracies motivated by bias towards others on account of their *economic* views, status, or activities"). Simply put, claims under § 1985(3) do not reach conspiracies motivated by economic or commercial animus. *United Bhd. of Carpenters*, 463 U.S. at 839.

Because Petitioner did not plead in her amended complaint that Respondents engaged in the conduct at issue as a result of gender-based animus, the district court properly dismissed Petitioner's amended complaint. Even if discrimination on the basis of gender is actionable under § 1985, Petitioner has not properly alleged that Respondents engaged in any conduct as the result of gender-based animus. Rather, Petitioner identified the class of persons who allegedly have suffered class-based animus as Luzerne County women with powerful male spouses who are engaged in divorce proceedings in that County. Petitioner failed to allege any other class-based animus on which she purports to assert any claims under § 1985. Contrary to this Court's pronouncement in *Bray*, Petitioner has not claimed that she suffered discriminatory conduct *because of her gender*. Therefore, Petitioner's amended complaint was properly dismissed as a matter of law.

IV.

PETITIONER'S AMENDED COMPLAINT AGAINST ALL OF THE RESPONDENTS IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

All § 1983 claims are subject to the applicable state statute of limitations for personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 280, 105 S. Ct. 1938, 1949, 85 L. Ed. 2d 254, 275 (1985). Although this Court in *Wilson* only addressed the question of whether § 1983 claims are governed by the state statute of limitations for personal injury actions, the Third Circuit Court of Appeals has held that § 1985(3) claims are subject to the same limitations. *Bougher v. University of Pittsburgh*, 882 F.2d 74, 79 (3d Cir. 1989). Accordingly, Pennsylvania's two year statute of limitations for personal injury actions, 42 Pa. C.S.A. § 5524, applies to Petitioner's claims under § 1985(3), as well as those claims under § 1983. *Id.*

As set forth in the amended complaint, Petitioner's claims against Respondents Makowski and Latona arise only from their alleged conduct in connection with a support hearing conducted in Luzerne County in 1983. *See* Amended Complaint at ¶ 58(3), 58(4). Similarly, Petitioner's allegations against Respondent Yelen arise in connection with a master's hearing which he conducted in Luzerne County during Petitioner's divorce proceedings. *See* Amended Complaint ¶ 58(9). With respect to Respondent Eugene Duffy, Petitioner complains of conduct that allegedly occurred at some time during 1983 to 1990. All acts that the Respondents are alleged to have done against Petitioner were known by Petitioner more than two years before the amended complaint was filed in September, 1995. Moreover, Petitioner's amended complaint demonstrates that Petitioner can plead no set of facts to warrant the tolling of the statute of limitations on her claims against these Respondents.

CONCLUSION

For all or any of the foregoing reasons, Respondents Thomas A. Makowski, Esq., Sandor Yelen, Esq., Suzan Latona, Eugene Duffy, and the Honorable Robert E. Colville respectfully request this Court to reject Petitioner Carolee Medico's petition for a writ of certiorari. Petitioner has failed to establish any significant reasons why the writ should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court, nor has Petitioner identified any conflict with applicable decisions of this Court or any other Court of Appeals on the same or similar issues present in this matter.

Respectfully submitted,

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